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SUPREME COURT, U.S

(2)

No. 98-1696

in the

Supreme Court

of the

United States

October Term 1998

UNITED STATES OF AMERICA,

Petitioner,

vs.

ROY LEE JOHNSON

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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999

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	iii
ADOPTION	1
REASON FOR GRANTING THE WRIT.	2
1. The Court of Appeals opinion was a correct interpretation of 18 U.S.C.§ 3583	
CONCLUSION	7

TABLE OF AUTHORITIES

Lynch v. Overholser, 369 U.S. 705, 82 S.Ct. 1063 (1962)..... 4

United States v. Bass, 404 U.S. 336, 92 S.Ct. 515 (1971)..... 4,5

United States v. Blake, 88 F.3d 824 (9th C. 1996)..... 3

ADOPTION

The Respondent agrees with the accuracy of Petitioner's Question Presented, Opinions, Below, Statutory Provisions, Jurisdictional statement, and Statement of Case, and adopts those as his own.

ARGUMENT

1. The Court of Appeals opinion was a correct interpretation of 18 U.S.C.§ 3583

The Respondent submits that the Sixth and Ninth Circuits are correct in their determination that a defendant is entitled to credit for time spent wrongfully incarcerated against supervised release.

The Sixth Circuit, in determining this appeal, specifically found that 18 U.S.C. § 3624(a) requires that a defendant be released from the Bureau of Prisons on the date of the expiration of the prisoner's term of imprisonment. The Court reasoned that, in situations like that of the Respondent, this statute could not be given full effect, as the Respondent served 2 and ½ years in prison longer than he should have under the law. The United States took 2 ½ years of the Respondents freedom under an erroneous interpretation of 18 U.S.C. §

924(c). Therefore, to put § 3624(a) to some effect, adjustment of the term of supervised release was warranted.

The Ninth Circuit similarly held, in *United States v. Blake*, 88 F.3d 824 (9th C. 1996), that in order to give § 3624(a) effect when faced with a situation where a defendant has served in excess of his required sentence, credit should be given against supervised release term. The court found that fairness, as well as the rule of lenity, required such a result. *Id.* at 825

Petitioner argues that the plain language of 18 U.S.C. § 3583(e) requires the holding that a defendant may not obtain credit against his supervised release term for time spent incarcerated erroneously. Although it is true that 3583(e) states that supervised release begins on the defendant's release from prison, it is also true that Congress failed to consider the effect of wrongful imprisonment. As the Sixth Circuit stated "it is clear that

Congress did not consider the effect of retroactive application of sentences when it drafted [18 U.S.C. § 3583]." *(Petitioner's Appendix 4a)* Congress' failure to consider this scenario creates ambiguity in the statute, an ambiguity which must be resolved in favor of the Respondent. As this Court found in *United States v. Bass*, 404 U.S. 336, 92 S.Ct. 515 (1971), "where there is ambiguity in a criminal statute, doubts are resolved in favor of the defendant." 404 U.S. at 348

Further, the literal reading of a particular term of a statute, to the exclusion of the balance of the statute, has never been recommended by this Court. As this Court has stated "The decisions of this Court have repeatedly warned against the dangers of an approach to statutory construction which confined itself to the bare words of the statute [cite omit], for literalness may strangle meaning." *Lynch v. Overholser*, 369 U.S. 705, — , 82 S.Ct.

1063,1067 (1962)

A literal reading of 18 U.S.C. § 3583(e), to the exclusion of the rest of the statute, would create a result not warranted. Congress did intend that the Bureau of Prisons not hold a defendant longer than his lawful sentence. *18 U.S.C. § 3624(a)* The only way to give some effect to that imperative, under these particular circumstances, is to credit supervised release.

The Petitioner also ignores the fact that, although supervised release and imprisonment do have some divergent goals, they both still carry punishment as an overriding factor. As such, giving credit against a term of supervised release on account of extra time served incarcerated is equitable.

This Court has consistently held that "ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity." *Bass* at 92 S.Ct. 522 The Sixth

Circuit, recognizing the ambiguity in Title 18 with regards to this issue, resolved the issue in favor of the Respondent. This determination should be upheld, and no writ should issue.

CONCLUSION

The Respondent requests that this Court uphold the finding of the Court of Appeals, and deny the petition for writ of certiorari.

Respectfully submitted,

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